

JOSE LUIS MENDOZA-CARDENAS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ORDER DENYING MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

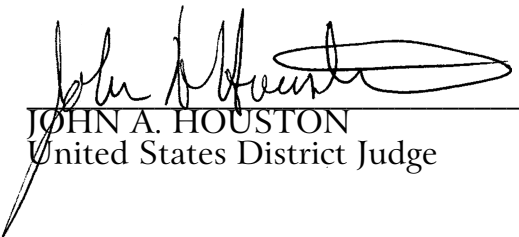
A knowing and voluntary waiver of a statutory right is enforceable. United States v. Navarro-Botello, 912 F.2d 318, 321 (9th Cir. 1990). The right to collaterally attack a sentence pursuant to 28 U.S.C. § 2255 is statutory in nature, and a defendant may therefore waive the right to file a § 2255 motion. See, e.g., United States v. Abarca, 985

1 F.2d 1012, 1014 (9th Cir. 1993) (holding that, by entering plea agreement whereby
 2 defendant waived right to appeal his sentence, defendant relinquished right to directly or
 3 collaterally attack his sentence on the ground of newly discovered exculpatory evidence).

4 The scope of a § 2255 waiver may be subject to potential limitations. For example,
 5 a defendant's waiver will not bar an appeal if the trial court did not satisfy certain
 6 requirements under Federal Rule of Criminal Procedure 11 to ensure the waiver was made
 7 knowingly and voluntarily. Navarro-Botello, 912 F.2d at 321. Such a waiver might also
 8 be ineffective where the sentence imposed is not in accordance with the negotiated
 9 agreement or violates the law. Id.; United States v. Littlefield, 105 F.3d 527, 528 (9th
 10 Cir. 1996). Additionally, a waiver may be "unenforceable" and may not "categorically
 11 foreclose" a defendant from bringing § 2255 proceedings where a petitioner claims
 12 ineffective assistance of counsel with regard to whether such a waiver was made knowingly
 13 and voluntarily. Washington v. Lampert, 422 F.3d 864, 871 (9th Cir. 2005); Abarca,
 14 985 F.2d at 1014; see also United States v. Pruitt, 32 F.3d 431, 433 (9th Cir. 1992).

15 Petitioner does not assert this Court failed to satisfy the requirements under Federal
 16 Rule of Criminal Procedure 11 to ensure Petitioner knowingly and voluntarily waived his
 17 right to directly or collaterally attack his conviction and sentence. Petitioner does not
 18 claim his sentence was not in accordance with the negotiated plea agreement or that his
 19 sentence violates the law. Petitioner does not claim ineffective assistance of counsel with
 20 regard to the knowing and voluntary nature of his waiver. Indeed, Petitioner does not
 21 assert that his waiver was not knowing or voluntary. Because the instant § 2255 motion
 22 is a collateral attack on Petitioner's sentence, it falls within the parameters of Petitioner's
 23 waiver and must be denied. Accordingly, **IT IS HEREBY ORDERED** Petitioner's motion
 24 is **DENIED**.

25 Dated: April 12, 2012


 JOHN A. HOUSTON
 United States District Judge